

The CIOT and ATT Anti Money Laundering Compliance Scheme – a brief introduction for the Taxation Disciplinary Board

This note accompanies this afternoon's talk and is not a stand alone document. It is intended to give a very broad introduction to UK anti money laundering regime. It focuses on the implications for members of the CIOT and ATT. It is not exhaustive and members of the TDB should seek specialist advice if they have ML queries.

Introduction

Why are we here – as members of the TDB you may find yourselves considering a complaint against a firm who has registered with the CIOT or ATT Money Laundering Regulations 2007: Registration, Monitoring and Compliance Scheme.

Background

The anti money laundering (AML) legislation comprises

- Proceeds of Crime Act 2002 (as amended by the Serious Organised Crime and Police Act 2005) (POCA)
- Terrorism Acts 2000 (as amended by the Anti-Terrorism, crime and security Act 2001) and 2006
- Money Laundering Regulations 2007 (MLR 2007)

POCA (extracts therefrom)

A person commits a Money Laundering offence if he

- Conceals, disguises, converts or transfers criminal property or removes criminal property from England and Wales or from Scotland or from Northern Ireland
- Enters into or becomes concerned in an arrangement which he knows or suspects facilitates (by whatever means) the acquisition, retention, use or control of criminal property by or on behalf of another person; or
- Acquires, uses or has possession of criminal property except where adequate consideration was given for the property
- Requirement to report knowledge or suspicion
- Tipping off

MLR 2007 (replaced MLR 2004 and came into effect on 15 December 2007)

The MLR 2007 apply to the specific areas of business as set out in Regulation 3. Tax advisers come within the scope of MLR (and have done since April 2004).

- Apply to (amongst others) tax advisers/auditors/insolvency practitioners/external accountants 'acting in the course of business carried on by them in the United Kingdom'
- Apply to businesses not individuals ie principals in a business
- Do not apply to employees; members who work wholly abroad (ie outside the UK); members who are fully retired; members not working in tax (or any other part of the regulated sector)

The MLR 2007 impose obligations on businesses in the regulated sector to put in place systems and controls in order to meet the requirements of the UK anti money laundering regime.

What are the obligations under the MLR 2007?

Underpinning the MLR 2007 is the concept of a risk based approach. Firms should adopt a policy which enables them to direct the greatest resource and attention to the clients/areas where they perceive the greatest risk to be.

- **Customer Due Diligence (CDD)**

Firms must have a risk assessment process in place and carry out customer due diligence on that basis. This includes the concepts of:

- 'simplified' due diligence which may be permissible in certain limited circumstances: and
- Enhanced due diligence which must be applied for higher risk clients, for example, politically exposed persons and clients whom you have not met in person.

Firms are also required to monitor, on an ongoing basis, their relationship with their clients and have identity in place for all clients, including those who have been with the practitioner for many years.

- **Record keeping**

Firms are required to maintain and retain records relating to their clients' identity. In broad terms these records should be kept for 5 years after the client ceases to be a client.

- **Nominated Officer (often referred to as the MLRO)**

Firm must appoint a NO. This should be a senior person in the firm. Their role is to manage the firm's compliance with the ML legislation. They receive reports of knowledge or suspicion of ML and decide whether the report should be forwarded to the Serious Organised Crime Agency. Sole practitioners need not appoint a NO as they effectively take on that role themselves.

- **Training**

The firm must provide staff with ongoing training so that they are aware of the law relating to money laundering and terrorist financing and know how to identify money laundering, how to identify clients and how to report suspicions to the MLRO.

- **Supervision**

Each firm must be supervised for compliance with the anti money laundering legislation by a supervisory authority listed in Sch 3 of MLR 2007. Tax advisers can be supervised by their professional body provided it is listed in MLR 2007 or HMRC. CIOT and ATT are supervisory authorities.

CIOT and ATT approach to supervision

- Supervision is carried out on a 'firm' basis (registered firm)
- Members who are principals in a firm are advised that their firm must be supervised by a supervisory authority.
- Members are not obliged to be supervised by CIOT or ATT eg they could be supervised (if eligible to be so) by ICAEW/ACCA/ etc or even HMRC

Who is eligible to be supervised by CIOT and ATT?

- A firm must have a least one principal who is a member of the CIOT or ATT to be eligible to apply to be supervised by CIOT/ATT

How do the CIOT and ATT schemes operate?

- Firms complete an application form which asks for details about the
 - size of the firm
 - nature of the business
 - level of turnover
 - names of principals and their professional qualifications
 - standard disclosure questions
- CIOT/ATT review application and if the application is successful CIOT/ATT categorises the firm into low, medium or high category

Successful applicants undertake to

- a) To comply with the rules of the Scheme;
- b) To observe and uphold the standards of the CIOT/ATT as contained in the CIOT/ATT's Professional Rules and Practice Guidelines;
- c) To act as the person responsible for ensuring compliance with the terms of this undertaking by the firm;
- d) To pay to the CIOT/ATT such registration fee and such annual fee as the Council of the CIOT/ATT shall from time to time prescribe.

- Registered firms will be required to submit an annual return which will ask for information about the firm's compliance with the AML legislation. They must also permit and co-operate with inspection visits by CIOT/ATT or their authorised representatives.
- CIOT/ATT as supervisory authorities provide guidance for members

<http://www.tax.org.uk/showarticle.pl?id=6135> CCAB anti money laundering guidance

<http://www.tax.org.uk/showarticle.pl?id=6339> Tax sector anti money laundering guidance

CIOT/ATT also offer helpline advice

- CIOT/ATT may refuse to register the applicant firm

TDB role

The CIOT and ATT AML Scheme rules

(<http://www.tax.org.uk/attach.pl/6088/7008/Scheme%20Rules%20draft%20CIOT050907.pdf> and

<http://www.att.org.uk/attach.pl/628/654/Scheme%20Rules.pdf>) provide for the Taxation Disciplinary Board to deal with complaints against registered firms as follows

6. Discipline

6.1 The Scheme is part of the laws of the Association and a registrant who fails to comply with its terms is liable to disciplinary action under those laws. A complaint against a registrant alleging failure to comply with the Scheme shall be referred for action by the TDB, which may apply any appropriate sanction in accordance with its powers from time to time which may include the power to recommend that a registrant be removed from the register.

6.2 For the avoidance of doubt, a registrant alleged to have failed to comply with paragraph 5.5 shall be liable to disciplinary action by or on behalf of the Association, and it shall not be a defence that a failure of compliance was an act or omission of a principal or member of staff who is not a Member.

6.3 A registrant may not withdraw, or apply to be removed, from, the register whilst subject to disciplinary action under or in pursuance of paragraph 6.1.

We envisage that the most likely cases to be referred to the TDB will concern:

- Persistent failure to submit returns or provide information to the CIOT/ATT
- Failure to co-operate with inspection visits
- Failure to have sufficient AML controls and policies in place

Sanctions

As noted above in the extract from the scheme rules the usual range of sanctions will apply together with the power to recommend removal from the register of firms supervised by CIOT and ATT.